
OPINION OF THE PUBLIC ACCESS COUNSELOR

THE JOURNAL & COURIER,
Complainant,

v.

LAFAYETTE POLICE CIVIL SERVICE COMMISSION,
Respondent.

Formal Complaint No.
18-FC-90

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging that the Lafayette Police Civil Service Commission violated the Access to Public Records Act.¹ The Commission filed an answer to the complaint through attorney James F. Olds. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 12, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This case involves a dispute over access to a stipulation of facts related to the discipline of an officer of the Lafayette Police Department (“LPD”). On May 9 and May 30, 2018 the Lafayette Police Civil Service Commission (“Commission”) met in executive session to hear evidence concerning disciplinary charges brought by the police department against one of its officers.

On June 4, 2018, Ron Wilkins (“Wilkins”), a reporter with *The Journal & Courier*, filed a public records request with the Commission, which includes, in relevant part, the following:

I would like to inspect the stipulation approved in official action...during the Civil Service Commission meeting May 30, 2018.

The next day, the Commission denied Wilkins’ request to inspect the stipulation. In doing so, the Commission relied on Indiana Code section 5-14-3-4(b)(12), which provides a public agency with discretion to withhold “[r]ecords specifically prepared for discussion or developed during discussion in an executive session.”

On June 12, 2018, Wilkins filed a formal complaint with this Office alleging the Commission’s denial of his request constituted a violation of the Access to Public Records Act. Wilkins contends that during a public meeting on May 30, 2018, the Commission approved a motion to adopt the stipulation.

It is worth mentioning that the Lafayette Police Department, in a correspondence dated June 12 2018, appears to have provided Wilkins with a factual basis for the disciplinary action taken against the Officer.

The Commission disputes Wilkins' claim that an APRA violation occurred in this case. Specifically, the Commission argues that it is not required to disclose the requested record; and thus, its denial of the request is appropriate under the law.

ANALYSIS

1. The Access to Public Records Act ("APRA")

The Access to Public Records Act ("APRA") states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The Lafayette Police Civil Service Commission ("Commission") is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the Commission's public records during regular business hours. Ind. Code § 5-14-3-3(a).

APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Records Prepared for an Executive Session

Indiana Code section 5-14-3-4(b)(12) provides public agencies with a the discretion to withhold the following from public disclosure:

Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision *does not apply* to that information required to be available for inspection and copying under subdivision (8).

(emphasis added). Indiana Code section 5-14-3-4(b)(8) requires the disclosure of the following information from a public employee's personnel file to be available for inspection and copying:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

In other words, if the (b)(12) exception applies to a particular public record or records, a public agency cannot invoke it to withhold information that is required to be disclosed under Indiana Code sections 5-14-3-4(b)(8)(A) through (C).

Here, the requested record is a stipulation of facts associated with a disciplinary due process proceeding against a Lafayette police officer. The Commission argues that it has the discretion—in accordance with the (b)(12) exception—to withhold the stipulation facts requested by Wilkins because the parties (the LPD and the officer) prepared the stipulation solely for the purpose of consideration by the Commission during an executive session.

As a preliminary matter it is important to acknowledge that the stipulation of facts at issue in this case is a public record for purposes of APRA. *See* Ind. Code § 5-14-3-2(r).² It need not be entered into the record at a public meeting to qualify as public record, rather it is a public record by operation of law because it meets the statutory definition.

A stipulation of facts is a convenient device to expedite hearings and make the proceedings more efficient. Adopting them during a public hearing is likely not necessary, but it appears the parties disagree about whether the Commission adopted the stipulation of facts at a public meeting.

Regardless of whether it is adopted, the stipulation was ostensibly prepared for the executive session in which the due process hearing took place. In short, the Commission argues that it has the discretion to withhold the stipulation of facts in accordance with APRA under the (b)(12) exception.

² “Public record” means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

This Office agrees.

Had the stipulation of facts been the only documentation of the factual basis for the discipline, it would be required to be released. Alternatively, if the proceeding did not result in termination, demotion or suspension, the stipulation would have remained in the employee's personnel file. Only when personnel action results in a certain level of discipline is Indiana code section 5-14-3-4(b)(8)(C) triggered and a factual basis necessary.

A factual *basis* is mutually exclusive from a detailed statement of underlying facts of an allegation into personnel wrongdoing. The basis is a summary of a personnel action and a statement of why the agency took corrective disciplinary action. The basis is what is required to ultimately be disclosed, but can very well be developed contemporaneous with – or subsequent to – the underlying facts.

The Indiana Court of Appeals addressed a similar issue in *Unincorporated Operating Div. of Ind. Newspapers, Inc. v. Trs. of Ind. Univ.*, 787 N.E.2d 893, (Ind. App. 2003). There, the court stated:

Information concerning the final disciplinary action might encompass the nature, extent, and general reason behind the decision to discipline or discharge a public employee, but not the intimate details of the factual investigation which forms the basis of the action.

The court also considered the (b)(12) personnel exception to the executive session materials issue and recognized that the underlying facts were not necessarily disclosable so long as a factual basis also exists and is available for inspection.

Therefore, regardless of whether the Commission adopted the stipulation of facts in an open meeting, the parties developed the stipulation for the purpose of the due process executive session proceeding and may be withheld because a factual basis was provided.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Lafayette Police Civil Service Commission did not err in withholding the stipulation of facts in accordance with Indiana Code section 5-14-3-4(b)(12).

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor